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8 **BEFORE THE**
BOARD OF REGISTERED NURSING
9 **DEPARTMENT OF CONSUMER AFFAIRS**
10 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:

Case No.: 2011-545

12 **MICHELLE LYNN CALLAHAN**
24 Valencia Avenue, Unit 1
13 San Rafael, CA 94901

A C C U S A T I O N

14 **Registered Nurse No. 630418**

15 Respondent.

16
17 Complainant alleges:

18 **PARTIES**

19 1. Louise R. Bailey, M.Ed., RN (Complainant) brings this Accusation solely in her
20 official capacity as the Executive Officer of the Board of Registered Nursing, Department of
21 Consumer Affairs.

22 2. On or about December 22, 2003, the Board of Registered Nursing (Board) issued
23 Registered Nurse License No. 630418 to Michelle Lynn Callahan (Respondent). The Registered
24 Nurse License was in full force and effect at all times relevant to the charges brought in the
25 Accusation and will expire on March 31, 2011, unless renewed.

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1 "(d) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the
2 violating of, or conspiring to violate any provision or term of this chapter [the Nursing Practice
3 Act] or regulations adopted pursuant to it.

4 ...

5 "(f) Conviction of a felony or of any offense substantially related to the qualifications,
6 functions, and duties of a registered nurse, in which event the record of the conviction shall be
7 conclusive evidence thereof.

8 ...

9 9. Section 2762 of the Code states, in part:

10 "In addition to other acts constituting unprofessional conduct within the meaning of this
11 chapter [the Nursing Practice Act], it is unprofessional conduct for a person licensed under this
12 chapter to do any of the following:

13 "(a) Obtain or possess in violation of law, or prescribe, or except as directed by a licensed
14 physician and surgeon, dentist, or podiatrist administer to himself or herself, or furnish or
15 administer to another, any controlled substance as defined in Division 10 (commencing with
16 Section 11000) of the Health and Safety Code or any dangerous drug or dangerous device as
17 defined in Section 4022.

18 "(b) Use any controlled substance as defined in Division 10 (commencing with Section
19 11000) of the Health and Safety Code, or any dangerous drug or dangerous device as defined in
20 Section 4022, or alcoholic beverages, to an extent or in a manner dangerous or injurious to
21 himself or herself, any other person, or the public or to the extent that such use impairs his or her
22 ability to conduct with safety to the public the practice authorized by his or her license.

23 ...

24 10. Section 4022 of the Code provides:

25 "Dangerous drug" or "dangerous device" means any drug or device unsafe for self-use in
26 humans or animals, and includes the following:

27 (a) Any drug that bears the legend: "Caution: federal law prohibits dispensing without
28 prescription," "Rx only," or words of similar import.

1 (b) Any device that bears the statement: "Caution: federal law restricts this device to sale
2 by or on the order of a _____," "Rx only," or words of similar import, the blank to be filled
3 in with the designation of the practitioner licensed to use or order use of the device.

4 (c) Any other drug or device that by federal or state law can be lawfully dispensed only on
5 prescription or furnished pursuant to Section 4006."

6 11. Section 4059, subdivision (a), of the Code provides, in pertinent part, that "[n]o
7 person shall furnish any dangerous drug, except upon the prescription of a physician . . ."

8 12. Section 4060 of the Code provides, in pertinent part that "[n]o person shall possess
9 any controlled substance, except that furnished to a person upon the prescription of a physician . .
10 ."

11 13. Section 11173, subdivision (a), of the Health and Safety Code provides:

12 "No person shall obtain or attempt to obtain controlled substances, or procure or attempt to
13 procure the administration of or prescription for controlled substances, (1) by fraud, deceit,
14 misrepresentation, or subterfuge; or (2) by concealment of a material fact."

15 REGULATORY PROVISIONS

16 14. California Code of Regulations, title 16, section 1442, states:

17 "As used in Section 2761 of the code, 'gross negligence' includes an extreme departure from
18 the standard of care which, under similar circumstances, would have ordinarily been exercised by
19 a competent registered nurse. Such an extreme departure means the repeated failure to provide
20 nursing care as required or failure to provide care or to exercise ordinary precaution in a single
21 situation which the nurse knew, or should have known, could have jeopardized the client's health
22 or life."

23 15. California Code of Regulations, title 16, section 1444, states, in part:

24 "A conviction or act shall be considered to be substantially related to the qualifications,
25 functions or duties of a registered nurse if to a substantial degree it evidences the present or
26 potential unfitness of a registered nurse to practice in a manner consistent with the public health,
27 safety, or welfare. Such convictions or acts shall include but not be limited to the following:

28 . . .

1 "(c) Theft, dishonesty, fraud, or deceit.

2 ..."

3 **COST RECOVERY**

4 16. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
5 administrative law judge to direct a licensee found to have committed a violation or violations of
6 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
7 enforcement of the case.

8 **DRUGS**

9 17. **Abilify** is the trade name for aripiprazole and is an antipsychotic medication. It is a
10 "dangerous drug" pursuant to Business and Professions Code section 4022.

11 18. **Adderall** is a brand name for a combination psychostimulant drug containing
12 amphetamine and dextroamphetamine, is a Schedule II controlled substance as designated by
13 Health and Safety Code section 11055, subdivision (d)(I), and is a "dangerous drug" pursuant to
14 Business and Professions Code section 4022.

15 19. **Amphetamine** is a Schedule II controlled substance as designated by Health and
16 Safety Code section 11055, subdivision (d)(I), and is a "dangerous drug" pursuant to Business
17 and Professions Code section 4022.

18 20. **Buspar** is the trade name for buspirone and is used to treat anxiety. It is a "dangerous
19 drug" pursuant to Business and Professions Code section 4022.

20 21. **Lunesta** is the trade name for eszopiclone. It is a sedative, also called a hypnotic,
21 and is used to treat insomnia. It is a Schedule IV controlled substance as designated by Health
22 and Safety Code section 11057, subdivision (d), and is a "dangerous drug" pursuant to Business
23 and Professions Code section 4022.

24 22. **Lamictal** is used alone or with other medications to prevent or control seizures
25 (epilepsy) in people aged 2 and older. It may also be used to help prevent the extreme mood
26 swings of bipolar disorder. It is a "dangerous drug" pursuant to Business and Professions Code
27 section 4022.

1 23. **Oxazepam** is a drug which is a benzodiazepine derivative used extensively for the
2 treatment of anxiety and insomnia and in the control of symptoms of alcohol withdrawal.
3 Oxazepam has moderate amnesic, anxiolytic, anticonvulsant, hypnotic, sedative and skeletal
4 muscle relaxant properties compared to other benzodiazepines. Oxazepam is a Schedule IV
5 controlled substance as designated by Health and Safety Code section 11057, subdivision (d)(18),
6 and is a "dangerous drug" pursuant to Business and Professions Code section 4022.

7 24. **Sonata** is the trade name for zaleplon. It is a nonbenzodiazepine hypnotic from the
8 pyrazolopyrimidine class. It is a Schedule IV controlled substance as designated by Health and
9 Safety Code section 11057, subdivision (d), and is a "dangerous drug" pursuant to Business and
10 Professions Code section 4022.

11 25. **Temazepam** is the generic name for Restoril. It is a Schedule IV controlled
12 substance and narcotic as defined by Health and Safety Code section 11057, subdivision (d)(24),
13 and a "dangerous drug" pursuant to Business and Professions Code section 4022. It is generally
14 prescribed for the short-term treatment of sleeplessness in patients who have difficulty
15 maintaining sleep. In addition, temazepam has anti-anxiety, anticonvulsant, and skeletal muscle
16 relaxant properties.

17 26. **Valium** is a trade name for diazepam, a psychotropic drug for the management of
18 anxiety disorders or for the short-term relief of the symptoms of anxiety. It is a Schedule IV
19 controlled substance as defined in Health and Safety Code section 11057, subdivision (d)(7), and
20 is a "dangerous drug" pursuant to Business and Professions Code section 4022. Valium can
21 produce psychological and physical dependence and it should be prescribed with caution
22 particularly to addiction-prone individuals (such as drug addicts and alcoholics) because of the
23 predisposition of such patients to habituation and dependence.

24 27. **Vicodin** is the brand name for Hydrocodone Bitartrate (a semisynthetic narcotic
25 analgesic and antitussive with multiple actions qualitatively similar to those of codeine) &
26 Acetaminophen. It is a Schedule III controlled substance pursuant to Health and Safety Code
27 section 11056, subdivision (e), and a "dangerous drug" pursuant to Business and Professions
28 Code section 4022.

28. **Xanax** is the trade name for alprazolam. It is a Schedule IV controlled substance and narcotic as defined by Health and Safety Code section 11057, subdivision (d)(1), and a “dangerous drug” pursuant to Business and Professions Code section 4022. Xanax is used for the management of anxiety disorders or for the short-term relief of the symptoms of anxiety.

FACTUAL STATEMENT

29. From April 27, 2006, until December 14, 2006, Respondent was employed by Sutter Solano Hospital in Vallejo, California. She was terminated for committing acts of time card fraud.

30. From January 2007, until September 18, 2009, Respondent was employed by the Alameda County Medical Center in Oakland, California. She was reprimanded for tardiness, patient care issues, and absences, and then laid off.

31. On or about November 15, 2007, Respondent falsified a written prescription allegedly from Dr. Kimberly Henry for Lunesta 2 mg, Vicodin 500 mg, and Valium 10 mg.

32. On or about July 10, 2008, Respondent was detained and cited for shoplifting merchandise at Nordstrom Rack in Sacramento, California. Respondent agreed to a two-year stay away order.

33. On or about May 29, 2008, in the criminal proceeding *People v. Michelle Lynn Callahan*, Sacramento County Superior Court Case No. 08M04965, Respondent was convicted by a guilty plea of violating Penal Code sections 484 (Theft), a criminal offense that she committed at Gottschalk's Department Store on April 18, 2008. On or about September 12, 2008, after the completion of a court ordered theft awareness program, Respondent's conviction was dismissed under Penal Code section 1385.

34. On or about August 29, 2008, in the criminal proceeding *People v. Michelle Lynn Callahan*, Marin County Superior Court Case No. CR159828A, Respondent was convicted by a guilty plea of violating Penal Code sections 490.5 (Petty Theft), a criminal offense that she committed at Macy's Department Store on May 26, 2008. On or about August 29, 2009, after the completion of a court ordered theft awareness program, Respondent's conviction was dismissed under Penal Code section 1385.

35. On or about November 30, 2009, Respondent admitted to the Board's investigator that she was diagnosed with bipolar disorder and that she takes Abilify, Adderall, Buspar, Lamictal, Sonata, and Xanax as a result. However, Respondent did not provide the Board with proof of the diagnosis or any prescriptions for these medications.

36. On or about December 2, 2009, Respondent tested positive for amphetamines, oxazepam, and temazepam.

FIRST CAUSE FOR DISCIPLINE

**(Bus. & Prof. Code §2761(a)(1)
(Gross Negligence)**

37. Respondent is subject to disciplinary action under section 2761, subdivision (a)(1), of the Code for unprofessional conduct, as defined by California Code of Regulations, title 16, section 1442, in that she committed acts of gross negligence in carrying out her usual certified or licensed nursing functions. Specifically, respondent was grossly negligent in that on the occasions more particularly set forth in Paragraphs 28 through 35, above, she committed the following acts:

- a. Passed a false, forged, and fraudulent prescription to obtain Vicodin and Valium;
- b. Obtained and possessed controlled substances including Valium and Vicodin; and
- c. Committed repeated acts of theft, deceit, and dishonesty.

SECOND CAUSE FOR DISCIPLINE

**(Business and Professions Code sections 2761(a) and 2762(a))
(Unprofessional Conduct: Obtaining and/or Possessing
Controlled Substances or Dangerous Drugs)**

38. Respondent's registered nurse license is subject to discipline under section 2761, subdivision (a), of the Code for unprofessional conduct, as defined by Code section 2762, ~~subdivision (a), as more particularly described in Paragraph 30, above, in that as a result of her~~ acquisition of Valium and Vicodin from a falsified prescription, she committed the following violations:

1 a. Obtained and or possessed controlled substances in violation of Code section
2 4060;

3 b. Unlawfully obtained controlled substances by fraud, deceit,
4 misrepresentation, subterfuge and/or by the concealment of a material fact, in violation of Health
5 and Safety Code section 11173, subdivision (a); and

6 c. Unlawfully obtained and possessed dangerous drugs.

7 **THIRD CAUSE FOR DISCIPLINE**

8 **(Unprofessional Conduct: Use of a Controlled Substance and Dangerous Drug)**
9 **(Business and Professions Code sections 2761(a) and 2762(b))**

10 39. Respondent's registered nurse license is subject to discipline under section 2761,
11 subdivision (a), of the Code for unprofessional conduct, as defined by Code section 2762,
12 subdivision (b), in that on or about December 2, 2009, she used amphetamines, oxazepam, and
13 temazepam, controlled substances and dangerous drugs, to an extent or in a manner dangerous or
14 injurious to herself, any other person, or the public, and to the extent that such use impaired her
15 ability to conduct with safety to the public the practice authorized by her license, as more
16 particularly described in Paragraph 35, above.

17 **FOURTH CAUSE FOR DISCIPLINE**

18 **(Conviction of Substantially Related Crimes)**
19 **(Business and Professions Code sections 490 and 2761(f))**

20 40. Respondent is subject to disciplinary action under sections 490 and 2761, subdivision
21 (f), of the Code in that she was convicted of offenses substantially related to the qualifications,
22 functions, and duties of a Registered Nurse, within the meaning of California Code of
23 Regulations, title 16, section 1444. The circumstances are more particularly set forth in
24 Paragraphs 32 and 33, above.

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1 PRAYER

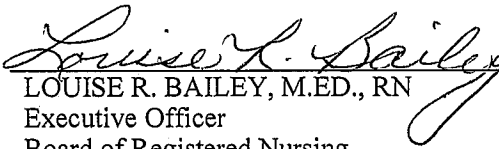
2 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
3 and that following the hearing, the Board of Registered Nursing issue a decision:

4 1. Revoking or suspending Registered Nurse License No. 630418, issued to Michelle
5 Lynn Callahan;

6 2. Ordering Michelle Lynn Callahan to pay the Board of Registered Nursing the
7 reasonable costs of the investigation and enforcement of this case, pursuant to Business and
8 Professions Code section 125.3; and

9 3. Taking such other and further action as deemed necessary and proper.

10
11 DATED: 12/16/10


12 LOUISE R. BAILEY, M.ED., RN
13 Executive Officer
14 Board of Registered Nursing
15 Department of Consumer Affairs
16 State of California
17 Complainant

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